

**Moving Beyond Disproportionality:
Students of Color and American Indian Students in Minnesota Who Are Identified with
Emotional and Behavioral Disorders**

Capstone Final Paper

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Table of contents

Abstract	2
How to Use This Report as a Tool for Education Equity	2
Methodology	3
Definitions	5
Background	6
What is Emotional Behavioral Disorder (EBD)?	8
Emotional Behavioral Disorder (EBD) - The Phantom Category	9
Inclusive Education, Ecology, and the Ideology of Normalcy	10
EBD as Container for New Segregation	11
Data Analysis	12
Associative Risks of Racial Inequalities in Special Education	19
Policy Recommendations	20
Conclusions	24
Works Cited	27
Resources	31

Abstract

Using the analytical lens of Critical Race Theory and Disability Studies (DisCrit), we examined the intersection of race and dis/ability to investigate numerical racial disproportionality and disparate discipline practices in Minnesota K-12 elementary and secondary schools. The purpose of this study was threefold: To examine how designating students of color and American Indian students in K-12 schools with emotional or behavioral disorders (EBD) or emotional disorder labels affects educational outcomes and life opportunities; to investigate the extent to which racial disproportionality exists across all special education categories, with an emphasis on EBD designation in Minnesota; and to investigate and propose policy recommendations believed effective in remedying overrepresentation of students of color in special education programs in the state of Minnesota. Review of literature in the fields of Critical Race Theory, Disability Studies, General and Special Education, and Social Justice in Education, along with government documents and two personal interviews found significant numerical racial disparities and discipline disparities in Minnesota schools for students receiving education services for EBD. Investigation generated six (6) policy recommendations for consideration: Support a Task Force to Uphold Obama-era Guidelines and to Hold Schools Accountable; Strengthen System-Wide Coordination for Preventive Care; Require Implicit Bias Training; Expand Positive Behavioral Interventions and Support (PBIS) Training; Strengthen Collaboration Between the Minnesota Department of Education and the Minnesota Department of Human Rights; Review Statewide Assessment Criteria for Identification of students for Emotional Behavior Disorders (EBD).

Keywords: Critical Race Theory, DisCrit, disproportionality, emotional behavioral disorder (EBD), emotional disorders, Minnesota, special education, students of color

How to use this report as a tool for education equity

Moving Beyond Disproportionality is a visioning tool to inform and catalyze actions of diverse stakeholders toward realizing racial equity in education in Minnesota. Designed to fortify and renew responsive, collaborative efforts to engender racially equitable and inclusive Minnesota K-12 classrooms, this report invites critical reflection and intentionality towards improving educational outcomes.

The current state of racial disproportionality in special education identification in Minnesota entreats stakeholders to acknowledge and address the problem as one centered in historical inequities, yet continues as a contemporary injustice. This report contributes to public policy by providing background and guidance in furthering effective, racially equitable school policies and practices in Minnesota and expanding educational opportunities.

The objectives of *Moving Beyond Disproportionality* include:

- Examine the current state of affairs of students of color and American Indian students identified with emotional disorder in Minnesota;
- Provide an historical context for what has happened with emotional behavioral disorders (EBD) labeling in order to better understand its relationship to school inequities;
- Frame a discourse around what is needed to achieve equity;
- Present current data, disaggregated by race and special education status, of student academic outcomes to help craft policy aims and objectives;
- Offer recommendations to address school inequities around EBD overrepresentation

Methodology

We drew upon theoretical literature and data that we examined for this report from primary and secondary sources and databases. We reviewed the work of scholars from the fields of Critical Race Theory, Disability Studies, General and Special Education, and Social Justice in Education. These readings led us to additional sources examining factors that produce racial hierarchies that creates inequities in K-12 schools. We also conducted several personal interviews over the course our research to expand and explore pedagogical practice in a Minneapolis special education elementary school classroom and conceptualization of emotional disorders in the academy. This report departs from previous research on education in Minnesota because it focuses on EBD within the context of the larger institutional setting.

DisCrit (Dis/ability and Critical Race Studies) and Gloria J. Ladson-Billings' idea of the racial achievement gap as one of educational debt provide the theoretical framework for this report. DisCrit theory proposes a dual analysis of race and ability to examine connections between constructions of race and dis/ability in education and society (Annamma, Connor, & Ferri, 2013). Educational disparities, among other things, are legacies of education debt accrued over time, with winners and losers along racial lines, the ramifications of which extend into other kinds of debt: economic, socio-political, and moral (Ladson-Billings, 2006)

Unlike class and gender, race remains untheorized, often conflated with class, ethnicity, and national origin and provides greater explanatory power over class-based and gender-based stand-alone explanations of school experience and performance despite intersectionality across all three (Ladson-Billings & Tate IV, 2016). We feel confident in positing race as an analytic tool and significant factor in determining school inequality and consequently, racial disproportionality in special education classrooms. Numerical racial disproportionality assumes a host of consistent educational opportunity gaps and social disparities, from disciplinary overrepresentation (Whitford, 2017; Skib, et. al., 2011; Booker & Mitchell, 2011; Bradshaw, Mitchell, O'brennan, & Leaf, 2010; Vincent, Sprague, & Tobin, 2012) to reduced educational needs

(Waitoller, Artiles, & Cheney, 2010; Zhang, Katsiyannis, Ju, & Roberts, 2014) to engagement with the criminal justice system (Fabelo, et. al., 2011; Wald & Losen, 2003).

Framing race as a significant factor in determining school inequalities does not minimize the complex and nuanced ways in which the social and cultural world of schools as concretely contributing to educational disparities, in both general and special education settings. Artiles, Kozleski, Trent, Osher, & Ortiz, A. (2010) astutely challenges us to pay explicit attention to culture, socio-cultural practices, and educational structures in explaining disproportionality, such as the quality and amount of student support; relationships between school and communities of color; “student-teacher connectedness” as structured by schools; and the cultural competence and social emotional capacities of school personnel (p. 295). In an underappreciated sense, the problem of racial overrepresentation in certain special education labeling is as much an issue for general as for special education.

What’s at stake is the effectiveness of the ideological apparatuses of schools themselves as agents of cultural and social reproduction--or rather, their stake in and legitimization of existing social hierarchies. Bourdieu (1977) made plain the utility of education systems in perpetuating, naturalizing and legitimating the “social order”:

By making social hierarchies and the reproduction of these hierarchies appear to be based upon the hierarchy of “gifts,” merits, or skills established and ratified by its sanctions, or, in a word, by converting social hierarchies into academic hierarchies, the educational system fulfils a function of legitimation which is more and more necessary to the perpetuation of the “social order” as the evolution of the power relationship between classes tends more completely to exclude the imposition of a hierarchy based upon the crude and ruthless affirmation of the power relationship (p. 496).

Research Questions

How does designating students of color with emotional or behavioral disorders (EBD) or emotional disorder labels affect educational outcomes and opportunities for these students generally in the United States?

To what extent, if any, does racial disproportionality exists, particularly as it applies to EBD designation, across the spectrum of special education categories in the state of Minnesota?

What interventions are effective in remedying overrepresentation of students of color in special education programs in the state of Minnesota?

Definitions

The following brief list of definitions provide a point of departure and common language around key words and concepts to better understand educational disparities around students of color and American Indian students in Minnesota. While recognizing synchronic or semantic variation in all language, we offer the lexicon as a list of “working definitions,” with the hope that they offer clarify, facilitate dialogue and promote better understanding. We recognize that these definitions are not the only possible interpretations of the words.

Critical Race Theory(CRT)

CRT as an intellectual movement that centers race in analyses that examine relationships between race, racism and power. CRT as applied to this specific report will examine the intersection of race and dis/ability (DisCrit) based on the following non-ordered approach: 1) Examine the relationship between race and dis/ability, focusing on ways that racism and ableism circulate interdependently, often in neutralized and invisible ways, to uphold notions of normalcy; 2) Examine the intersection of race and ability, recognizing the material and psychological impacts of being labelled as raced or dis/abled, which sets one outside of western cultural norms; 3) Understand that Intersectionality analysis of race and ability puts into perspective the legal and historical aspects of dis/ability and race and how both have been used separately and together to deny the rights of some citizens; and 4) Recognize whiteness and ability as property and that gains for people labelled with dis/abilities have largely been made as a result of interest convergence of white, middle class citizens.

DisCrit

A theoretical framework that combines aspects of Critical Race Theory(CRT) and Disability Studies to propose a dual analysis of race and ability or their lack of (dis/ability) to show that social construction of dis/ability depends heavily on race and can result in marginalization of students of color in special education.

Education Debt

Coined by Gloria Ladson-Billings, the term is defined here as the sum of all previously incurred deficits or opportunity gaps in education for communities of color and American Indian communities. Four aspects of education debt are: 1) Historical debt, or historical, systemic (political, legal, and institutional) denial of access to formal public education for groups of people; 2) Economic debt, or contemporary and historical school funding disparities, earnings ratio disparities related to years of schooling, and the cumulative effect of wealth disparity; 3) Sociopolitical debt, or historic exclusion of people of color from decision-making mechanisms in

politics and civic life that relate to control of access to quality education; and 4) Moral debt, the disparity in personal and social responsibility to groups of people historically excluded from social benefits and opportunities.

Emotional or Behavioral Disorders (EBD)

Emotional or behavioral disorders (EBD) as used in this policy brief is a category used to characterize a pattern of one or more emotional or behavioral responses that adversely affect a child's educational performance. The State of Minnesota uses the EBD category to define and create criteria and evaluation policies for the definition of emotional disturbance (ED) under Sec. 300.8 (c) (4) of the Individuals with Disabilities Education Act (IDEA). Under 10 Minn. R. 3525.1329 subp. 1, EBD is characterized as an established pattern of one or more of the following responses: "A. withdrawal or anxiety, depression, problems with mood, or feelings of self-worth; B. disordered thought processes with unusual behavior patterns and atypical communication styles; or C. aggression, hyperactivity, or impulsivity." The pattern must adversely affect educational/developmental performance; be cardinally different from cultural, ethnic or age appropriate norms; and consistently presented in three or more different settings, two of which must be educational.

Limitations

The small number of personal interviews of practitioners is a limitation of this report. We recognize the limited data used for analysis. Access and cost constraints limited the amount and kinds of data we were able to gather. Due to the limited granularity of the data obtained, statistical analysis beyond compiling descriptive statistics remained unobtainable. This report does not purport to make any correlational analyses.

Background

National Legislation on Special Education

Exclusion of students with disabilities from public education has a long trajectory. In 1893, the Massachusetts Supreme Judicial Court ruled that a child "weak of mind," troublesome to children in the classroom, and who could not take ordinary, decent care of himself could be expelled from public school. From the early 20th Century through the late 1950's states across the country enacted legislation to exclude students with disabilities from public schools. But by the late 1960s and early 1970s, most states had laws on the books requiring schools to educate students with disabilities, albeit, uneven (Yell, Rogers, & Rogers, 1998, p 220).

The Brown v. Board of Education (1954) Supreme Court decision played a significant role in the growing understanding that all people have a right to public education, regardless of disability status. A major victory

for the Civil Rights Movement, the *Brown v. Board* decision cemented the constitutional guarantee of equal protection under the law found in the Fourteenth Amendment, holding that racial segregation violated equal protections and denied minorities equal educational opportunity. Equal opportunity to an education, inherent in the legal reasoning, was extended to those with disabilities (Yell, Rogers, & Rogers, 1998). A flurry of disabilities advocacy group activity followed after *Brown*, with legislative mandates in its wake--what might be called the “Equal Opportunity Movement” (Yell, Rogers, & Rogers, 1998, 221-224).

On November 29, 1975 President Gerald Ford signed the Education for All Handicapped Children Act (EHA), known as Public Law 94-142. The law required all states accepting money from the federal government to provide equal access to education for children with disabilities. According to the United States Department of Education (2010) “The law supported more than 1 million children with disabilities who had been excluded entirely from the education system. The law also supported children with disabilities who had had only limited access to the education system and were therefore denied an appropriate education. This latter group comprised more than half of all children with disabilities who were living in the United States in the early 1970s” (p. 5-6). For example, only one in five children with disabilities received education in U.S. schools in 1970, and laws excluding students who were blind, deaf, and emotionally disturbed from from public schools were on the books in many states (United States Department of Education, 2010).

President George H. W. Bush signed into law the Individuals with Disabilities Education Act (IDEA) or P.L. 108-446 in 1990, replacing EHA. Administrations since have amended the law to conform to various administration agendas. For example reauthorization in 2004 aligned the statute with requirement of the No Child Left Behind Act (NCLB). Germane to this report is the recent final regulation put into place in the waning months of President Obama’s administration. On December 19, 2016, the US Department of Education issued regulations to determine if significant disproportionality based on race or ethnicity was occurring in states as appeared in The Federal Register for 34 CFR Part 300. The new regulations clarify that States must address significant disproportionality in the incidence, duration, along with disciplinary actions, including suspensions and expulsions, in the identification and placement of children with disabilities. The Executive Summary of the regulations expressed: “The purpose of these final regulations is to promote equity in IDEA. Specifically, the final regulations will help to ensure that States meaningfully identify LEAs with significant disproportionality and that States assist LEAs in ensuring that children with disabilities are properly identified for services, receive necessary services in the least restrictive environment, and are not disproportionately removed from their educational placements by disciplinary removals” (Individuals with Disabilities Education Act, 2016).

What is Emotional Behavioral Disorder (EBD)?

The U.S. Department of Education (DOE) uses the term “emotional disturbance (ED)” in naming a pattern of one or more emotional or behavioral responses that adversely affect a child’s educational performance. Importantly, the DOE allows for each state to use an alternative term to describe the ED category and to create criteria and evaluation policies for the latter term.

Assistance To States For The Education Of Children With Disabilities (2004) defines emotional disturbance (ED):

(i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

Sec. 300.8 (c) (4) (i)

The state of Minnesota elected to use the term “emotional behavioral disorders (EBD)” and the definitional characteristics below to define emotional disturbance under the state’s administrative rules governing Chapter 3525.1329, Children with a Disability, Subpart 1:

EBD is characterized as an established pattern of one or more of the following responses:

- A. withdrawal or anxiety, depression, problems with mood, or feelings of self-worth;
 - B. disordered thought processes with unusual behavior patterns and atypical communication styles;
- or
- C. aggression, hyperactivity, or impulsivity.

The pattern **must adversely affect educational/developmental performance; be cardinally different from cultural, ethnic or age appropriate norms**; and consistently presented in three or more different settings, two of which must be educational.

Evident in both regulatory and statutory language is imprecise terminology that is highly subjective in interpretation. For example, what is meant precisely by “unusual behavior patterns” or objective standards for “satisfactory interpersonal relationships with peers and teachers?” How, when, and under what set of circumstances are these patterns and relationships measured?

Possible answers to these and other questions surrounding EBD are varied. At best there is the risk of falling into a morass of educated guesses; at worst, collapsing into pure speculation. Institutional norms, values, and culture often substitute for precise clinical terminology and verification in the process. The most salient fact

in the conundrum is the pedigree of the nomenclature: EBD, born as a result of government regulation, is an administrative term, rather than a clinical one.

Consequently, EBD has all of the chimerical traits that is its birthright. EBD is, in many respects, an ignis fatuus.

Emotional Behavioral Disorder (EBD) - The Phantom Category

Definitional Predicament

Discussion around the contentious issue surrounding disproportionality in special education of culturally and linguistically diverse (CLD) students, in particular, the categories of emotional disturbance (ED) or emotional behavior disorder (EBD), often pivots around convoluted commentary and scholarship about, divergent interpretations of, and conflicting definitions of the terms themselves (Sullivan, 2017, 244-247).

Sullivan (2017) warned:

When studying and elucidating disproportionality in the identification of ED, we must be mindful of the pitfalls of oversimplification (Skiba et al., 2016) and be prepared to wade through the quicksand of imprecise, and at times inscrutable, conceptual, psychometric, procedural, and causal issues surrounding identification of ED in schools, and potential disproportionality, even while maintaining a fundamental desire to do right by students (p. 249)

EBD - The Phantom Category

With that caveat in mind, we take stock of the fact that the current national educational policy, IDEA, and its rules and regulations do not provide definitions for its characterization of ED. Similar ambiguity surrounds Minnesota's language around the EBD category. Similarly, case law remains fraught, "reveal[ing] varying, and at times wildly inappropriate (e.g., irrational and unempirical), conceptualizations of psychopathology, volition, culpability, the purpose of special education, and students' rights to treatment versus penalty that parallel divergent scholarly perspectives" (Sullivan, 2017, 246).

As asserted earlier, EBD or ED is an administrative category, rather than a clinical one, which also furthers potential confusion for scholars and practitioners. In this sense, it is a "phantom" category, a cipher solely dependent upon the subjectivity of evaluators, rather than scientific, quantifiable measurements of identification.

Ambiguity around the definition of EBD presents a range of problems in identification of students, provision of targeted services, and associative misidentification from faulty evaluation methods to non-congruent evaluation methods across schools and school districts to opportunities for implicit bias at various points in the process. Complications arise around identification and services that extend beyond educational settings that are difficult to uncouple from race and historical racism in schools.

Inclusive Education, Ecology, and the Ideology of Normalcy

We posit that DisCrit offers a potent analytical lens that challenges accepted notions of the intersection of dis/ability and race while expanding our knowledge of how race operates in school around issues of dis/ability. This framework registers past education debts, while opening up more ecological approaches that contest the dominant ideology of normalcy and deficit-focused assumptions of students with disabilities and CLD students in particular. Reid, & Knight (2006) noted, “In sum, the ideology of normalcy creates systems of disadvantage for minority students. Special education often excludes minority learners from the general education curriculum that profits Whites and defines standards” (p. 19). Waitoller et al. (2010) raised the question of past research as deficit focused (growing up in poverty, poorly funded schools, etc.), as opposed to more ecological examinations of educators’ beliefs and school climate and practices, which may have resulted in oversimplification of the explaining overrepresentation of CLD students. This offers a different direction for investigation, theorization, and interventions in racial disproportionality in special education. Annamma et al. (2013) construes DisCrit as a powerful method of disrupting ways “that binaries between normal/abnormal and abled/disabled play out in a range of contexts” (p. 10) within social relationships and institutions.

Waitoller & Thorius (2016) called for more emancipatory pedagogies (Universal Design for Learning and Culturally Sustaining Pedagogy) to advance inclusive education, which they define as:

... a continuous struggle toward (a) the redistribution of quality opportunities to learn and participate in educational programs, (b) the recognition and value of differences as reflected in content, pedagogy, and assessment tools, and (c) the opportunities for marginalized groups to represent themselves in decision-making processes that advance and define claims of exclusion and the respective solutions that affect their children's educational futures (p. 368).

In our view, Waitoller & Thorius (2016) presented four arguments that both center inclusive education as necessary to counter the ecology of racism and ableism and worry ways in which normalcy and whiteness generate certain groups of students as problems: 1) Historic scientific, political, and economic projects contributed to hierarchies in which race and ableism are intertwined and contribute to overrepresentation

among CLD students in special education; 2) Cultural beliefs about attributions of otherness construct race and ableism in tandem and relative to a positional “other”; that is, dis/ability has no meaning outside of ability or smartness and black is defined in opposition to white and whiteness; 3) Racism and ableism have real, tangible effects in social contexts that benefit some and oppress others; they assist in regulating unequal distribution of social goods; and 4) Racism and ableism need to be questioned and “abolished” in order to address vexing and complex issues of equity established by the larger construction of what is normal (p. 371-373).

EBD as Container for New Segregation

We are guided by Fiel (2013)’s framework of school resegregation as a “mode of social closure,” a perspective that “views school segregation as a mode of exclusion that emerges from group-based competition for resources and promotes educational stratification” (p. 830). Various forms of unequal capital (monetary, social, etc) accumulation create inequalities across schools that contribute to unequal student outcomes.

Exclusionary practices are a “means to an end” used to secure privilege or “monopolize access to resources.” Social closure theory suggests that privileges associated with unequal resource allocation granted to certain disability categories, stigmatization of emotional disorders (ED) labels, and exclusionary discipline practices such as physical restriction and seclusion, which are concentrated among students identified with EBD, constitute segregation effects of unequal distribution (disproportionality).

Using a Critical Race Theory lens, we therefore argue that exclusionary practices in education, rather than inclusionary best practice, are symptomatic of structural racism. We concur with Blanchett ’s (2009) view that “proper emphasis must be placed on systems that undermine student success and covertly collude in creating the environment for continued failure of marginalized children and families—not just the symptoms” (p. 382-383).

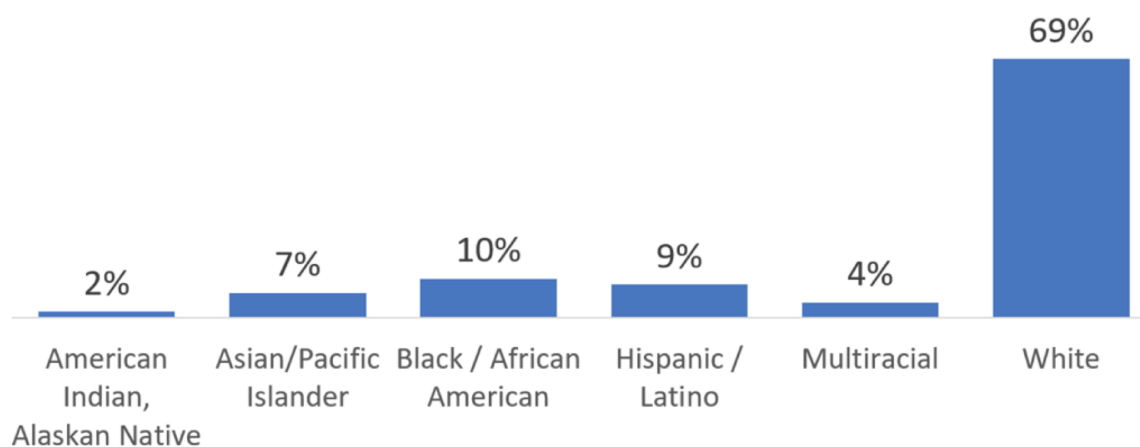
Ferri and Connor (2005) offered a lineage of deficit thinking and ability differences to rationalize re-segregationist practices after Brown v. Board, writing : “In the first years after Brown, racial re-segregation was accomplished in large part by placing non-White students in non-academic tracks and in special education” (p. 97). Ferri and Connor (2005) explicitly added that “one of the most effective and pernicious means of resisting desegregation has been to overrefer students of color to segregated special education classes” (p. 96).

Disproportionality in special education and disproportional placement of students of color in high incidence special education categories such as EBD, with high levels of seclusion, begs the question as to whether EBD serves as an exclusionary container for resegregation or a new form of segregation of which overrepresentation simply marks.

Data Analysis

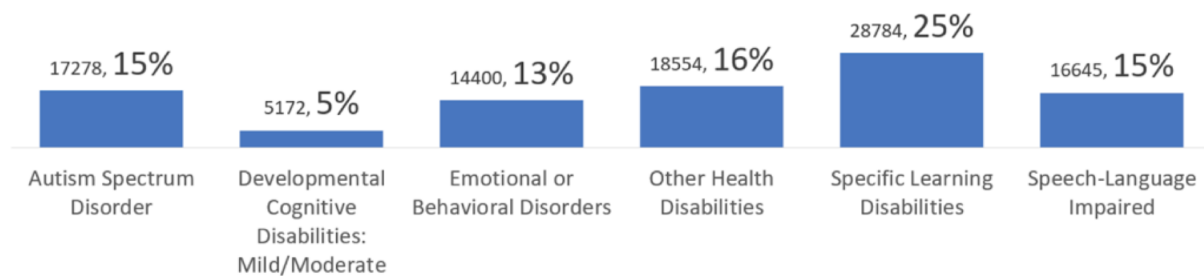
This section provides a data analysis that will illustrate the intersection of race and disability for students of color and American Indian students in Minnesota K-12 settings. The data analysis will show the over-identification of students of color in special education.

Figure 1. Total Number of Students in Minnesota K-12 Schools by Race/Ethnicity, 2016



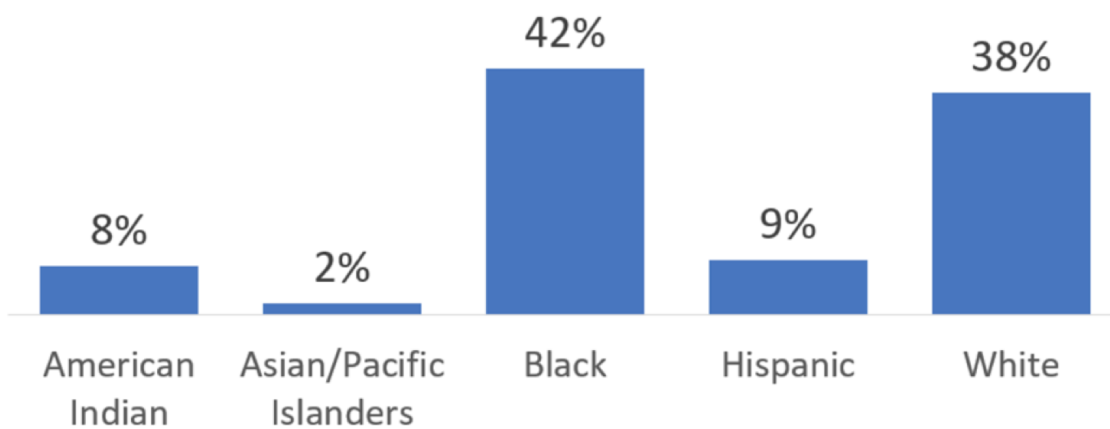
This figure represents the percentage of each ethnicity/race group in Minnesota K-12 Schools in 2016. White students make up the majority of the student population with Black/African American students following, followed by Hispanic/Latino, and Asian/Pacific Islander, finished with American Indian, Alaskan Native students.

Figure 2. High Incidence Disabilities 2017, Number and Proportion of Minnesota Students with Disabilities in Minnesota.



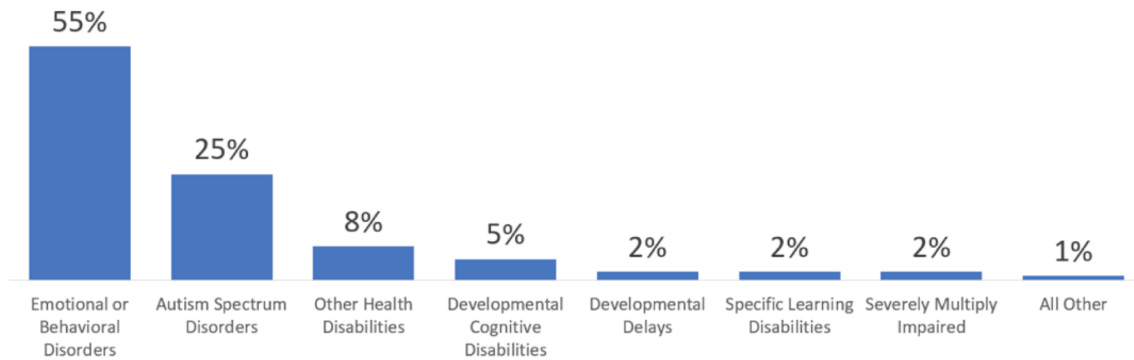
This graph represents what percentage of students in special education receive which service. Specific Learning disabilities are first at 25%, followed by 16% receiving other health disabilities, such as Visually Impaired and Deaf/Hard of Hearing services, then Autism Spectrum Disorder and Speech-Language Impaired both at 15%, EBD in fourth with 13%, and Developmental Cognitive Disabilities: Mild/Moderate last at 5%.

Figure 3: Students of Color Experience Disproportionate Amounts of School Discipline: Disciplinary Incident Reporting System Data 2015-2016



This graph shows the amount of students who receive school discipline. Although white students make up more of the student demographic than black students, they receive less discipline than black students. Black students make up only 10% of the student population, but receive 42% of disciplinary actions. American Indian students only make up 2% of the student population, however receive 8% of disciplinary actions.

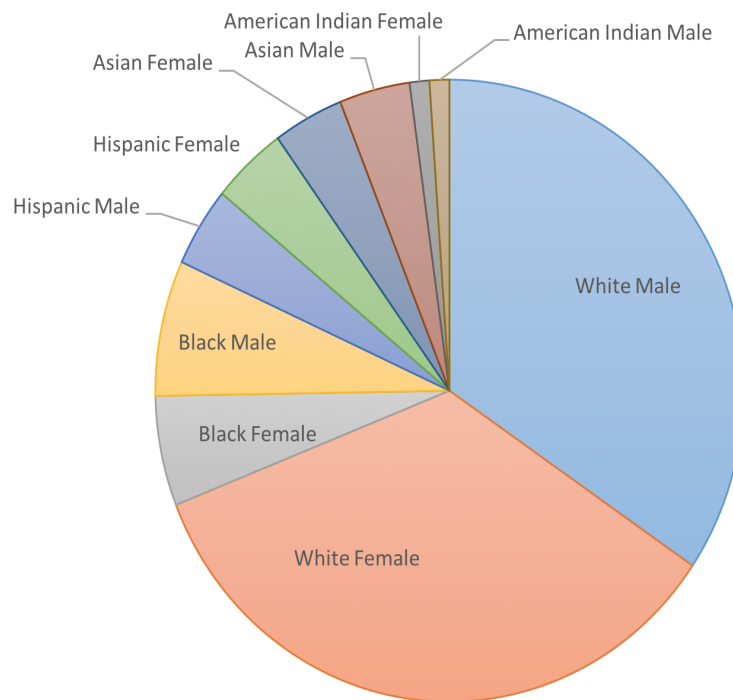
Figure 4. Students Secluded by Disability Category: 2015-2016.



EBD has the highest amount of students secluded in 2015-2016. Isolating students away from the rest of their peers can increase with the federal level setting the student is in. Autism falls way behind EBD with only 25% of students being secluded, compared to the 55% of students with EBD.

Figure 5. Percentage of Students by Race/Ethnicity and Gender in General Education with EBD in MN K-12 Settings, 2016

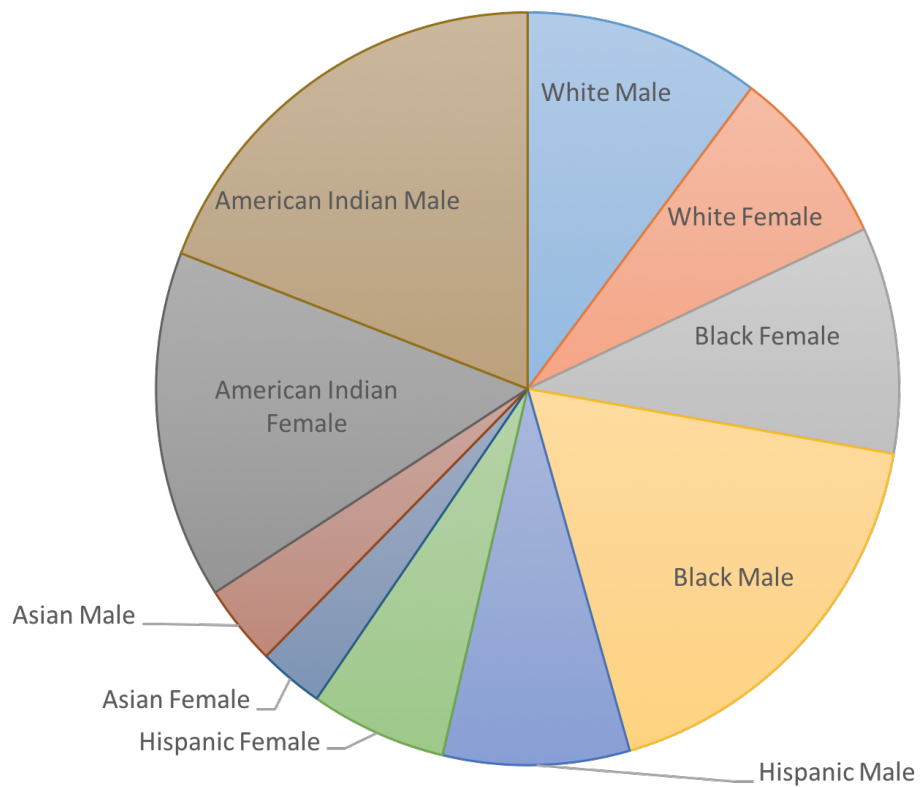
Percentage of Students in General Education in MN K-12 Setting, 2016



This figure illustrates the demographic makeup of students broken down into gender and race. White males make up 69% of the male general education population and white females make up 68% of the female population. Black males and females are 14.21% and 11.52%, respectively, of the student population. American Indian males and females account for 2.19% and 2.19%, respectively, of the student population.

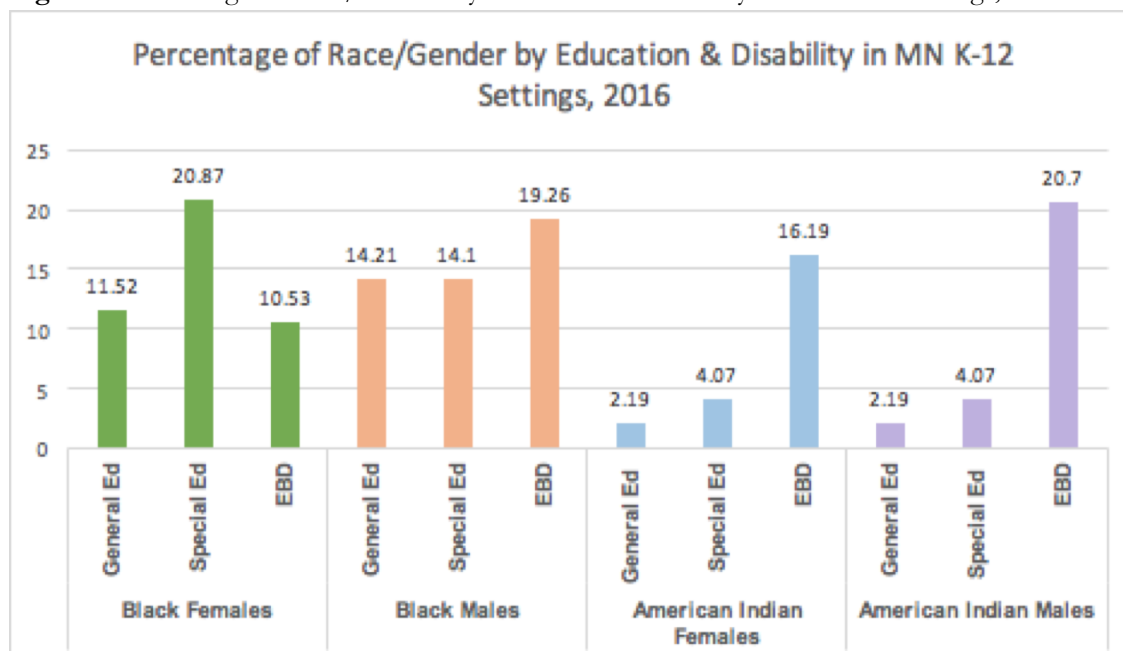
Figure 6. Percentage of Students in Special Ed with EBD in MN K-12 Settings, 2016

**Percentage of Students in Special Ed in MN K-12 Settings,
2016**



The pie chart illustrates the disproportionality of students of color with EBD in 2016. American Indian males and females make up 20.70% and 16.19%, respectively, although make up only 2% of the population together. Black males with EBD makeup 19.26%, however make up 14% of the general education setting.

Figure 7. Percentage of Race/Gender by Education & Disability in MN K-12 Settings, 2016.



This graph illustrates how the following four student groups are over-identified with both EBD and special education, EBD, or in special education compared to the general population. Black females account for 20% of special education services compared to only 11.5% of black females in general education. Black males make up almost 20% of the EBD population, but account for only 14% of general and special education. American Indian females and males are both overrepresented in special education services at 4.07%. American Indian males account for 16.19% of the EBD population, but make up only 2% of the general education population. American Indian females account for 20% of the EBD population, compared to the 2.19% in the general education.

Figure 8. Males of Different Races/Ethnicities with EBD over last 10 years in MN K-12 Settings.

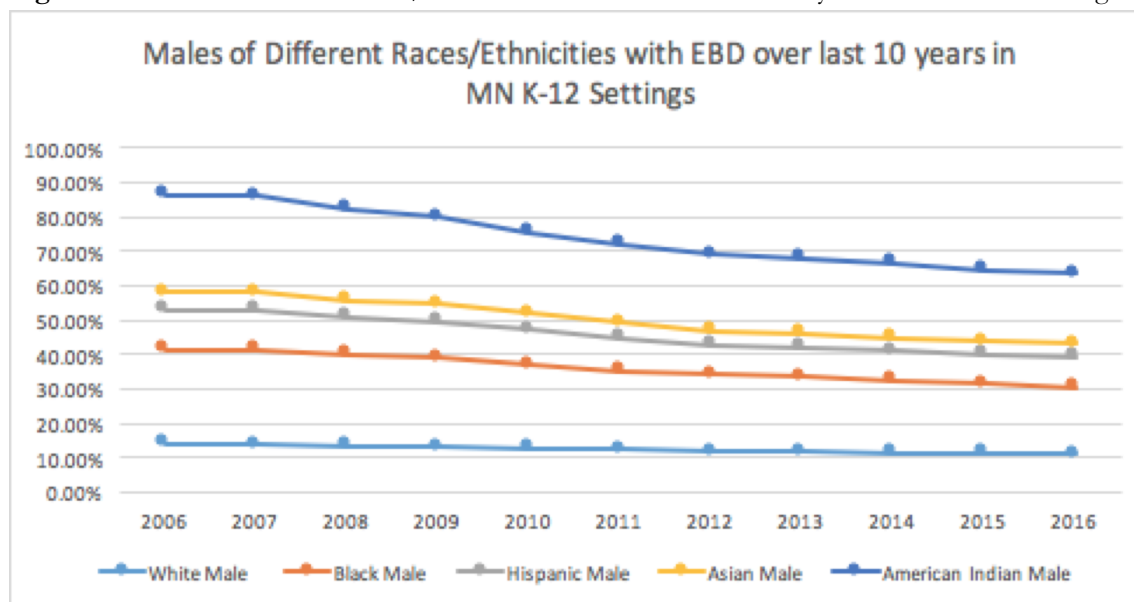


Figure 8 shows a decrease in EBD diagnosis over last 10 years for all male race/ethnicity groups. However as Figures 6 & 7 show, both Black and American Indian males are still overrepresented in the EBD category.

Figure 9. Females of Different Races/Ethnicities with EBD over last 10 years in MN K-12 Settings.

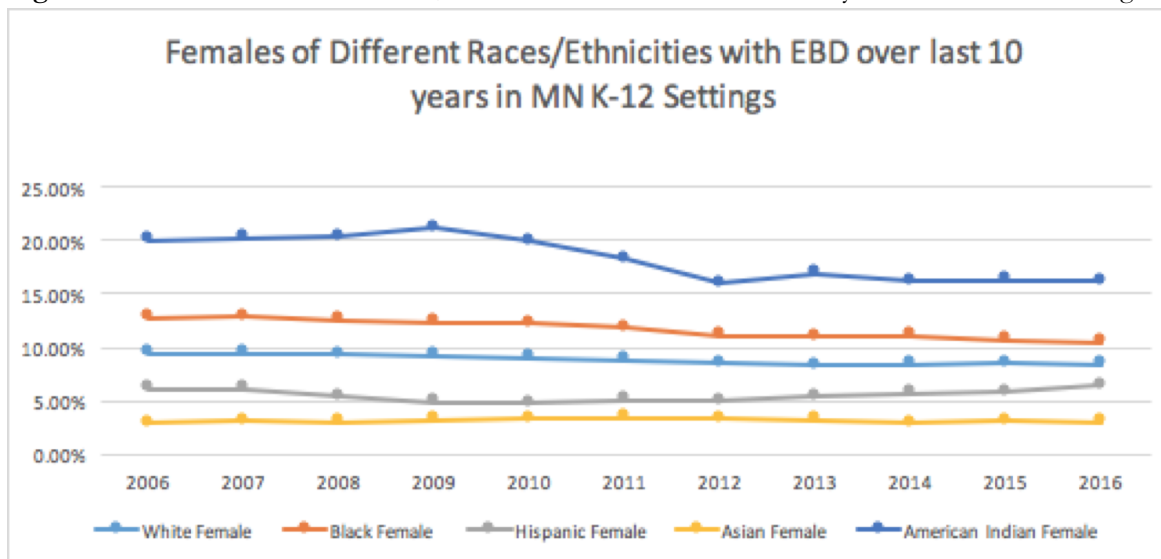


Figure 9 shows a stagnant line that represents the amount of females of different races/ethnicities with EBD over the last 10 years. However, as figure 6 and 7 show, American Indian females are still overrepresented in the EBD category.

Figure 10. Minnesota Federal Level Settings Overview

MINNESOTA FEDERAL LEVEL SETTING	PERCENT OF TIME IN DESIGNATED LEARNING ENVIRONMENT PER SCHOOL DAY
FEDERAL SETTING 1	Less than 21% of school day outside of classroom.
FEDERAL SETTING 2	21-60% of school day outside of classroom
FEDERAL SETTING 3	Separate classroom over 60% of the school day
FEDERAL SETTING 4	Separate public day school building for over 50% of the school day
FEDERAL SETTING 5	Separate private day school for over 50% of the school day
FEDERAL SETTING 6	Public residential setting for over 50% of the school day
FEDERAL SETTING 7	Private residential setting for over 50% of the school day
FEDERAL SETTING 8	Home based, home bound, or hospital setting

This table examines all federal level settings. Level 1 is general education classrooms. Level 1-4 are settings in which students spend outside of the classrooms or in a public day school.

Associative Risks of Racial Inequalities in Special Education

We see worrying trends for students with disabilities in their years beyond their K-12 experience, particularly among those labeled with a behavioral disability. Given the fact of racial disproportionality in certain special education categories such as EBD and disproportionate disciplinary actions such as restrictive procedures and seclusion visited among students identified with EBD, a pertinent question arises as to the consequences related to educational opportunities and opportunities beyond secondary schooling.

Research continues to suggest that exclusionary discipline negatively affects academic achievement. Gregory, Skiba, & Noguera (2010) suggested that suspensions may damage the learning process:

“Suspended students may become less bonded to school, less invested in school rules and course work, and subsequently, less motivated to achieve academic success. Students who are less bonded to school may be more likely to turn to lawbreaking activities and become less likely to experience academic success” (p. 60). Morris and Perry (2016) found that unequal suspension rates for African American students is one of the “important factors hindering academic progress and maintaining the racial gap in achievement” (p. 82).

Another risk aside from educational opportunities is placement into the “school to prison pipeline.” Involving millions of youth, the school to prison pipeline is substantially impactful. School discipline risks translate into risks of contact with the juvenile justice system for many affected youth who share certain demographics. The school to prison pipeline disproportionately affects certain groups among children and adolescents: students of color; students receiving special education services; children and adolescents who have experienced trauma; students experiencing poverty; and youth who identify as lesbian, gay, bisexual, and transgender (LGBT) (Mallett, 2016). Matta Oshima, Huang, Jonson-Reid, & Drake (2010) found that youth were at higher risk of entering adult correctional institutions if they had received educational services for emotional disturbance; they found no overall differences between disabled and nondisabled peers for adult offending after controlling for poverty patterns, except among those identified with ED or EBD (p. 107).

Finally, lower educational outcomes associated with students who have received special education services with EBD and other disabilities bear monetary costs to society. Lower graduation rates or time to graduation increase economic costs to schools and families with added costs for additional resources. Impediments to employment prospects and socioeconomic status due to grades or post-secondary preparation puts many youth at risk for lower productivity and wealth generation in adulthood.

It is important to reiterate the fact that special education labeling does not, in and of itself, directly generate any of the negative outcomes above. However, risks for involvement in the latter seem to be increased for certain groups, youth labeled with EBD among them. Which strengthens calls for remedy of racial disproportionality in special education identification and disciplinary procedures across both general and special education classrooms.

Policy Recommendations

Understanding Race and Disability as Interactive Social Constructs, not Distinctive Biological Markers.

To understand racism and ableism, we have to know the historical, racial construction of ability and ableism. This shift is necessary because the problem is not the person of color and/or the person with a disability, but rather, as Davis (2013) found, the ways normalcy and whiteness are constructed to generate certain groups of students as problems in order to rationalize their position in schools and society (as cited in Waitoller & King Thorius, 2016). Reinforced by popular media, current cultural imaginaries reproduce and maintain narratives about people with dis/abilities as “completely incapable, as “in need of charity” (Schur, Kruse, & Blanck, 2013), as “inspirational heroes”, as “evil or magical” (Charlton, 2006), and as Kim (2011) enumerated: “asexual” (as cited in Waitoller & King Thorius, 2016, p. 374). Therefore, the continued policy and practice conversation in the field of education must include a critical race framework to unpack, understand, and address disproportionality and the social impacts of racial disparities in disabilities and special education outcomes in our communities.

Using a critical race framework as guidance, we offer the following policy recommendations:

Support a Task Force to Uphold Obama-era Guidelines and to Hold Schools Accountable

We highly recommend convening a task force that is guided by Obama-era guidelines on disproportionality in the state of Minnesota. Currently, the legislative advisory group, the Student Discipline Working Group, reviews, among other things, racial disparities in Minnesota schools and submits written recommendations to the chairs and ranking minority members of the committees in the House of Representatives and the Senate with jurisdiction over education. But this group lacks authority to hold schools accountable or to provide incentives to remediate disproportionalities.

The proposed task force would identify districts and charter schools that have racial disproportionality in a) numerical representation; b) discipline; and c) restrictive environments in all definitions, monitoring, and

enforcement. are over-identifying students of color and indigenous students in special education. This taskforce will mandate that the identified district or charter school use 15% of its funding "...to include services to students with and without disabilities, from ages 3 through grade 12" (U.S. Department of Education, 2016). The taskforce would then hold that district or charter school accountable to ensure the district or charter school is using those funds as directed.

Albrecht, Skiba, Losen, Chung, & Middelberg, 2012 proposed eleven fundamental recommendations for federal policy. The Minnesota Department of Education and the state adopted many of these in some fashion. However, two recommendations among them we find especially prudent, pragmatic, and positive: 1) Shift attention "from a narrow focus on compliance with procedural aspects of special education identification to the systemic contributions to disproportionality that appear to begin well before special education referral" (Albrecht, et al., 2012, p. 23); and 2) establish a grant competition to encourage schools to explore the following:

- “• Study and develop interventions and systems reform efforts to address and reduce disproportionate representation in special education and school discipline;
- Improve teacher and administrator training in culturally responsive instruction and classroom management and discipline; and
- Improve school-based data collection systems for monitoring and disaggregating data and for training school personnel in interpreting and using such data to improve practices.”

(Albrecht, et al., 2012, p. 23)

A fully-empowered, well-funded, and expressly-charged task force would be better equipped to not only broaden the focus from procedural compliance of special education identification, but to expand focus on the ecology of general education classrooms—and school administrative structures—that reproduce disproportionality. The task force would also be funded to create monetary incentives for schools to explore creative interventions, reforms, and data collection systems to help mitigate and hopefully eliminate racial disproportionality in special and general education.

Strengthen Systemic Coordination for Preventive Care

Increased coordination across various systems, preventative care providers, and community resources would increase efficiency and ultimately, greater equity for all. More robust coordination efforts would provide schools and community constituencies better access to preventative care services, which could translate into increased instructional and behavioral support for all students. For example, if a student demonstrates low or mid-level needs for support, the school can provide more efficient intervention through increased access to

resources. Schools would be better able to deliver essential services of school nurses, psychologists, social workers and other care providers in a timely manner. We believe a systematic and/or programmatic review of current networks of coordination and delivery is warranted in moving toward this goal.

Require Implicit Bias Training for all School Personnel to Complement Equity Training

We believe most trajectories to special education begin within the fundamental feature of social life: social interaction. Close, highly personal social interactions between teachers and students in general education classrooms confirm or disconfirm shared assumptions and role expectations in given encounters to shape social reality.

Implicit bias plays an important role in student-teacher interactions and can lead to negative educational outcomes beginning in preschool classrooms (Girvan, Gion, McIntosh, & Smolkowski, 2017; Okonofua, Walton, & Eberhardt, 2016; Smolkowski, Girvan, McIntosh, Nese, & Horner, 2016). Given Minnesota's teacher to student racial composition of 96% white teachers to 30% students of color and indigenous students (MDE Report Card), implicit bias deserves critical attention. Researcher Walter Gilliam described implicit biases as "...subtle, often unconscious stereotypes that guide our expectations and interactions with people" (Montagne, 2016, September 28). Gilliam, et al. (2016) found that early preschool educators expected challenging behavior from black children versus their white counterparts (p. 11-12). U.S. Department of Education (2016) noted that "Black preschool children are 3.6 times as likely to receive one or more out-of-school suspensions as white preschool children" (p. 3). U.S. Department of Education (2016b) found that "Black preschool children are 3.6 times as likely to receive out of school suspensions as white preschool parents" (p. 3).

Consequently, Minnesota schools need additional implicit bias training components to existing equity training. This required training would be taught annually to all teaching staff, including licensed teachers, paraprofessionals, teacher aides, administrators, and other staff who have direct student contact. The model would focus on historical trauma and how race and ability are often intertwined in the education system. We recommend that a CRT framework be applied to this training to help in understanding how power and privilege can conspire to produce racial inequities.

A critical race component added to implicit bias training design would center culturally sustaining pedagogies that are not centered on White, middle-class, monolingual, and monocultural norms of educational achievement. Equity training in implicit bias for all teaching staff is needed to reduce racial disparities in special education identification, disciplinary occurrences, and the number of students of color and indigenous students in restrictive settings.

Expand Positive Behavioral Interventions and Support (PBIS) Training

In 2017, the state of Minnesota signed PBIS into legislation as an “evidence-based framework for preventing problem behavior, providing instruction and support for positive and prosocial behaviors, and supporting social, emotional, and behavioral, needs for all students” (MN Statute, 122A. 627). PBIS is largely a restorative justice approach to handling behavior issues in an education setting PBIS has shown moderate decreases in the number of office discipline referrals for students by eliminating out-of-class and seclusion practices. According to Minnesota PBIS, as of August 2017, 641, or 31%, of schools completed training or are in training for the PBIS model. MDE should hold schools accountable for failing to complete training or not beginning the training for PBIS.

The PBIS training approach, however, maintains a social/cultural deficit lens that situates deficits in CLD students. We contest this approach in that it assumes pathological deficit, rather than cultural and linguistic (human) variation, as “verification” of what is otherwise a subjective process of arbitrary referral and assessment decisions (Harry, & Klingner, 2007). PBIS needs to shift and specifically start to examine the intersection of race and disability. This could be done by closely looking at existing Tiered systems of support through a Critical Race Theory framework articulated in this policy brief. As PBIS evolves in its methods and practices we hope the program will move to adherence to greater culturally responsive ways of educating children.

Also, appropriate implementation of the model is important to realize the full benefit. Amanda Sullivan, a researcher at the University of Minnesota, adds that when the framework is applied with fidelity, schools will see improvements in behavioral and social emotional functioning, leading to more instructional and classroom time for students (personal communication, March 21, 2018). Without full fidelity, PBIS will become ineffective for behavioral support and management.

Strengthen Collaboration Between the Minnesota Department of Education and the Minnesota Department of Human Rights to Harness Synergy in Combating Systemic Racism

Hinrichs and Kaul (2018, February 2) reported that the Minnesota Department of Human Rights identified 43 school districts and charter schools that had large disparities in their student discipline data. The Minnesota Department of Education (MDE) and the Minnesota Department of Human Rights (MDHR) should collaborate to address disparities in discipline and other education issues. We see such synergistic collaboration critical to identification and provision of guidance to combat systemically racist practices. This collaboration would also foster greater transparency to bolster public trust and awareness.

Review Statewide Assessment Criteria for Identification of students for Emotional Behavior Disorders (EBD)

The subjective enterprise of identification of emotional behavioral disorders in Minnesota renders such a capricious process open to intentional and unintentional misidentification of students. While acknowledging genuinely altruistic efforts towards delivering appropriate special education services we must critically weigh the consequences and costs of misidentification. Federal guidelines for evaluation materials and procedures for identifying students who might need special education services state: “A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent” (34 C.F.R. § 300.304(b)(1)). Assessment tools may include behavioral logs, report cards, and school health files for students under evaluation. For EBD diagnosis, schools commonly refer back to the behavioral log to review a student’s behavior in the past six months. Because schools have differing behavior policies and protocols for relevant information for log entry this heterogeneous mix makes it difficult to make anything but intuitive hypotheses and guesses in cross-institutional or cross-district analyses. Inconsistency in the number of incidents of particular behaviors may also have an impact on decision making. Implicit bias, normalization of the disability deficit lens, and the entire complex of issues around the ecological or classroom context (Donovan, & Cross, 2002; Gutierrez, Asato, Santos, & Gotanda, 2002; Harry, & Klingner, J. K., 2006) add to the gravity and compelling nature of the problem. The entire evaluation process needs assiduous review to secure greater consistency, objectivity, and transparency.

Conclusions

Framing our analysis around the lens of DisCrit, we met our objectives. We provided an historical context of national legislation up to the current Trump administration’s efforts to stall implementation of Obama-era regulations to identify and address racial disproportionality. Contextualization of EBD within historical legislative efforts to extend equal educational opportunities for all students positions efforts to eliminate racial disparities in special education as a long-standing social justice issue.

We discussed the ambiguous, often contentious issues surrounding the administrative definitions of and research around emotional behavior disorders (EBD) in educational practice and parlance.

We forwarded the argument that disproportionality in special education--and EBD designation, in particular--carries forward re-segregation efforts that began in the aftermath of the 1954 Brown v. Board of Education decision. We believe application of a Critical Race Theory lens allows for more acute interrogation of the use of ableism and difference in pushing back against desegregation efforts. We employed Fiel (2013)’s Social Closure Theory to help frame a discourse around institutional or structural racism as complicit in stalling and/or dampening educational equity.

We presented current Minnesota Department of Education data, disaggregated by race and special education status to help shape and craft the final set of six policy recommendations we believe are specifically targeted to local constituencies.

We summarize our findings around our three initial research questions:

How does designating students of color with emotional or behavioral disorders (EBD) or emotional disorder labels affect educational outcomes and opportunities for these students generally in the United States?

We found that in general, students labeled with EBD comprise 11% of the state's total special education population, yet represent over half of all students who experience seclusion. Black students are more than 2x as likely to be diagnosed with EBD than average (school year 2015-16). Exclusionary discipline practices are well known in the literature to lower educational outcomes, and yet students identified with EBD experience proportionally higher levels of suspensions, restrictive procedures, and seclusion than other students in other disability categories and those in general education.

To what extent, if any, does racial disproportionality exist, particularly as it applies to EBD designation, across the spectrum of special education categories in the state of Minnesota?

Numerical disproportionality exists for students of color with EBD in the latest year for which we have statistics: 2016. Males of color are especially affected. American Indian males and females make up 20.70% and 16.19%, respectively, although they make up only 2% of the population together. Black males with EBD make up 19.26%, however make up 14% of the general education setting.

What interventions are effective in remedying overrepresentation of students of color in special education programs in the state of Minnesota?

Finally, we presented six policy recommendations :

- 1) Convening a task force that is guided by Obama-era guidelines on disproportionality in the state of Minnesota. We suggest that this body consider two intervention strategies among others: 1) Shift attention away from a narrow procedural compliance focus to directed focus on institutional practices and procedures that contribute to disproportionality starting in general education settings; and 2) Establish a grant to encourage schools to put in place local programs to bolster training and improve data collection systems.
- 2) Increase coordination across various systems, preventative care providers, and community resources to build greater cross-system efficiencies.
- 3) Require implicit bias training as a complement to current equity training for all school personnel.

- 4) Expand Positive Behavioral Interventions and Support (PBIS) training with hopes that program officials shift towards infusion of or guidance around understandings of the intersectionality of race and disability.
- 5) Strengthen Collaboration Between the Minnesota Department of Education and the Minnesota Department of Human Rights to Harness Synergy in Combating Systemic Racism.
- 6) Review Statewide Assessment Criteria for Emotional Behavior Disorders (EBD) Identification to reduce misidentification and maintain consistent procedures.

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Resources

Effective Programs for Emotional Behavioral Programs

https://www.district287.org/uploaded/A_Better_Way/EffectiveProgramsforEmotionalandBehavioralDisordersHanover2013.pdf

A report by Hanover Research provides general best practices and strategies for students with emotional behavioral disorders and profiles of two tiered intervention programs, Response to Intervention and Positive Behavioral Interventions and Supports (also referred to as School-Wide Positive Behavior Support).

Evidence-Based Practices for Students With Emotional and Behavioral Disorders: Improving Academic Achievement

https://elementaryemotionaldisturbance.weebly.com/uploads/1/4/7/3/14738022/farley_2012.pdf

The authors of this report “(a) provide an overview of EBPs and their importance for students with EBD, (b) describe two EBPs shown to be effective in increasing academic outcomes for students with EBD, and (c) assist teachers in locating and implementing additional EBPs by providing a step-by-step guide.”

Farley, C., Torres, C., Wailehua, C. T., & Cook, L. (2012). Evidence-based practices for students with emotional and behavioral disorders: Improving academic achievement. *Beyond Behavior*, 21(2), 37-43.

KWST Behavioral Development Group

<http://www.kwstbehavioraldevelopment.org/home.html>

KWST is a non-profit consulting group that offers mentoring sessions and life skills programs in supportive partnerships with organizations and individuals in the Twin Cities area.

Minnesota State Definition of Emotional Behavioral Disorder

<https://www.revisor.mn.gov/rules/?id=3525.1329>

This page from the MN Office of the Revisor of Statutes may be helpful in clarifying administrative rules concerning how the state of Minnesota systematically defines, determines, and evaluates eligibility for emotional behavioral disorder eligibility.

Positive Behavioral Interventions and Supports (PBIS)

<http://pbismn.org/>

Billed as “a framework or approach for helping schools select and organize evidence-based behavioral interventions into an integrated continuum that enhances academic and social behavior outcomes for all students,” PBIS has been instituted in over 300 Minnesota schools. A state-initiated project, PBIS provides districts and schools with a multi-tiered approach to training and technical support to promote student behavior improvement.

Positive Behavioral Strategies for Students with EBD and Needed Supports for Teachers and Paraprofessionals

<https://files.eric.ed.gov/fulltext/EJ1137055.pdf>

This article provides the results of a multiple case study of the perceptions of special education behavioral teachers, paraprofessionals, and general education teachers about effective strategies for improvement in EBD classroom behavior and educational outcomes.

Lukowiak, T. (2010). Positive Behavioral Strategies for Students with EBD and Needed Supports for Teachers and Paraprofessionals. *Journal of the American Academy of Special Education Professionals*, 40, 52.